

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

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DA 00-874

**PLEADING CYCLE ESTABLISHED FOR COMMENT ON
QWEST COMMUNICATIONS INTERNATIONAL INC.
REPORT ON PROPOSED DIVESTITURE
OF ITS LONG DISTANCE ACTIVITY IN THE U S WEST REGION
CC DOCKET NO. 99-272**

Released: April 14, 2000

Comments due: May 5, 2000

Reply Comments due: May 12, 2000

On August 19, 1999, Qwest Communications International Inc. (Qwest) and U S WEST, Inc., (U S WEST) filed joint applications pursuant to sections 214 and 310 of the Communications Act and sections 34-39 of the Cable Landing License Act (Applications), asking the Federal Communications Commission (Commission) to approve the transfer of control of licenses and lines.¹ On March 10, 2000, the Commission issued a Memorandum Opinion and Order (March 10 Order) approving the Applications subject to the requirement that, prior to closing the merger, Qwest and U S WEST (the Applicants) must comply with section 271 of the Communications Act by divesting Qwest's interLATA businesses originating in the U S WEST region. The March 10 Order also required that the Applicants submit a divestiture report to be reviewed by the Commission.² The Commission concluded that the licenses and lines would not be transferred

¹ See *Applications for Transfer of Control*, filed August 19, 1999 (CC Docket No. 99-272).

² 47 U.S.C. § 271. Section 271(a) states that "[n]either a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section." There are several exceptions to this prohibition. Section 271(b)(1) allows a Bell Operating Company to "provide interLATA services originating in any of its in-region States . . . if the Commission approves the application of such company for such State under subsection (d)(3)." 47 U.S.C. 271(b)(1). To date, U S WEST has not obtained such authority in any of its in-region states.

until: (i) the full Commission determines that the divestiture would result in a merger that satisfies section 271; and (ii) any such divestiture has been consummated.³ On April 14, 2000, Qwest submitted a divestiture report to the Commission in which Qwest proposes to irrevocably sell its in-region interLATA businesses to Touch America, Inc., a subsidiary of Montana Power Company.⁴ According to Qwest, the “report provides a complete discussion of Qwest’s pending transaction with Touch America, Inc. . . . [and] explains in detail the services to be assumed by Touch America, the network assets and employees it is acquiring, and all agreements and understandings between the parties.”⁵ Qwest further states “the report also addresses every other issue identified by the Commission in the [March 10 Order], and demonstrates that Qwest will be in full compliance with Section 271 at the time of the U S WEST merger closing.”⁶

Through this Public Notice, the Commission seeks comment on whether the divestiture, as described in the divestiture report, would result in a merger that complies with section 271 and Commission precedent, in particular, *AT&T v. Ameritech*.⁷ Interested parties must submit comments no later than **May 5, 2000**. The Applicants and interested parties may file reply comments no later **May 12, 2000**. **All filings regarding any aspect of the proposed merger should reference the Common Carrier Bureau docket assigned to this proceeding, CC Docket No. 99-272.**

The Commission shall issue a second order in this docket no later than 45 days after the public comment period closes, provided the Commission is satisfied that the record before it is accurate and complete, and that no further information is required. The second order shall state whether the merger may proceed and whether the divestiture results in a merger that complies

³ March 10 Order, para. 3.

⁴ Some of the information submitted by the Applicants and Touch America, Inc. is confidential. This information is available to interested parties pursuant to the protective orders issued by the Common Carrier Bureau in this proceeding.

⁵ Letter from R. Steven Davis, Senior Vice President, Government Affairs, Qwest, to Magalie R. Salas, Secretary, FCC, April 14, 2000.

⁶ *Id.* The March 10 Order required that “all ambiguity surrounding Qwest’s provision of interLATA services must be resolved prior to the merger closing.” March 10 Order, para. 24. The March 10 Order further states that the divestiture report “be placed on public notice for comment from all interested parties only after a senior Qwest executive certifies under oath that the information in the filed divestiture report is true and accurate.” *Id.* at para 26. Qwest has certified that the divestiture report filed today is true and accurate. See Affidavit of Dominic A. Gomez, Senior Vice President of Qwest.

⁷ *In the Matter of AT&T Corporation, et al., v. Ameritech Corporation and Qwest Communications Corporation; AT&T Corporation, et al., v. U S WEST Communications and Qwest Communications Corporation; McLeodUSA Telecommunications Services, Inc v. U S WEST, Inc.*, 13 FCC Rcd 21438 (1998) (*AT&T v. Ameritech*) *aff’d sub nom.* *U.S. WEST v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, (Feb. 28, 2000) (No. 99-869). See also, *AT&T Corp., v. BellSouth Corporation, and its carrier subsidiaries and affiliates, including (but not limited to) BellSouth Long Distance, Inc., and BellSouth Telecommunications, Inc.*, 14 FCC Rcd 8515, at 8526, para. 21, 22 File No. EAD-99-001, (rel. Mar. 30, 1999) (Com.Car.Bur.1999), *application for review pending*.

with section 271.⁸ In making that determination, the following are of particular importance to the Commission:

- whether there is any evidence that the transaction was not conducted at “arm’s length,” or whether Touch America, Inc. was required to purchase unnecessary or unwanted support services;
- whether any agreement would result in indirect ownership or control of Touch America, Inc. by the Applicants;
- whether there exists any joint marketing or other arrangement that would violate the Commission’s ruling in *AT&T v. Ameritech*;
- whether the Applicants’ Internet arrangement with Touch America, Inc. to transport packaged data to Qwest routers out of region complies with section 271; and
- whether any on-going Qwest business concern raises section 271 issues.

The Commission also welcomes comment on whether the Applicants have any affiliation that implicates section 271.⁹

GENERAL INFORMATION

Parties are reminded that this proceeding is governed by “permit-but-disclose” *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well. Interested parties are to file with the Commission Secretary, Magalie Roman Salas, 445 12th Street, S.W., TW B204, Washington, D.C. 20554, and serve Janice Myles of the Policy and Program Planning Division, Common Carrier Bureau, 445 12th Street, Room 5-C327, S.W., Washington, D.C. 20554, and International Transcription Service, Inc. (ITS), 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800, with copies of any written *ex parte* presentations in these proceedings filed in the manner specified above. We also require all written *ex parte*

⁸ The March 10 Order states that “no later than 45 days after the public comment period closes, [the Commission shall] issue an order stating whether the proposed divestiture would result in a merger that complies with section 271. This period may be extended if the report is inaccurate, incomplete or additional relevant information is necessary to complete [the Commission’s] review.” March 10 Order, para. 26.

⁹ For example, at the time the Applicants filed their applications for transfer of control of licenses and lines, Qwest was affiliated with Advanced Radio Telecom Corporation, Apex Global Internet Services, Inc., and Bell South. *See* March 10 Order, paras. 25, 34-39.

presentations or summaries of oral *ex parte* presentations in this proceeding to be served on all parties to the proceeding.

Interested parties may file pleadings as indicated above regarding the divestiture report. An original and 4 copies of all pleadings, in accordance with Section 1.51(c) of the Commission's Rules, 47 C.F.R. §1.51(c), must be filed with the Commission's Secretary, Magalie Roman Salas, 445 12th Street, S.W., TW B204, Washington, D.C. 20554. In addition, one copy of each pleading must be delivered to each of the following locations: (1) International Transcription Service, Inc. (ITS), 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800; (2) Office of Public Affairs, 445 12th Street, S.W., Room CY-C314, Washington, D.C. 20554; (3) Henry L. Thaggert, Common Carrier Bureau, 445 12th Street S.W., Rm. 5-C311, Washington D.C. 20554.

In addition to filing paper comments, parties may also file comments using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>> . Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Copies of the divestiture report and any subsequently filed documents in this matter may be obtained from International Transcription Service, Inc. (ITS), 445 12th Street, S.W., CY-B402, Washington, D.C. 20554, (202) 857-3800. These documents are also available for public inspection and copying during normal reference room hours at the following Commission office: Office of Public Affairs, Reference Operations Division, 445 12th Street, S.W., Room CY-C314, Washington, D.C. 20554

For further information, contact Henry L. Thaggert, Policy and Program Planning Division, Common Carrier Bureau at (202) 418-7941.